IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5733 OF 2006

Smt Shahubai Shankar Nimbalkar and ors. Petitioners

Vs

Shri Agrachand Punamchand Balai.. Respondent.

Mr V.D.Raut, for the petitioners.
Respondent absent, though served.

CORAM : D.B.BHOSALE,J.
DATE : 10.10.2006

PC:-

1. Heard the learned counsel for the petitioners. None appears for the respondent, though served. The petitioner has filed the affidavit of service and the acknowledgement in the form of a certificate issued by the postal authority dated 26.9.2006.

2. Rule. Returnable forthwith. By consent, Rule is heard finally.

3. This writ petition is directed against the order dated 24.7.2006, which reads thus:

> "1. Heard to counsel for plaintiff. The defendant and his counsel absent.
>
> 2. Perused record. Summons was served at Exhibit-10 dated 15.3.2003. Without written statement was proceeded on 29.3.2004. No cogent

reason. I pass order.

3. ORDER
Exhibit 63 is rejected."

By application at Exhibit-63 filed by the petitioners, they had prayed for setting aside "No W.S." order dated 29.3.2004. To that application the respondent had filed reply alternatively stating that they have no objection for allowing the application subject to payment of cost of Rs.5000/-. This Court had directed the petitioners vide order dated 29.8.2006 to deposit cost of Rs.5000/- in the trial Court and the petitioners have deposited the cost accordingly. Mr Raut, learned counsel for the petitioners, submits that the trail has not yet reached the stage of evidence. Keeping that in view and considering the overall facts and circumstances of the case, as also the reasons stated by the petitioners in paragraphs 2 and 3 of the application dated 23.2.2006, in my opinion, this is a fit case where the order dated 29.3.2006 deserves to be set aside. Hence, I pass the following order.

(i) The order impugned as well as "No W.S." Order are quashed and set aside. The written statement which is already placed on record on 18.3.2006 be taken on file and the trial Court to proceed with hearing of the suit

on merits Liberty to the respondent-plaintiff to withdraw the cost of Rs.5000/- deposited by the petitioners in the trial court unconditionally

(ii) Rule is disposed of.

(D.B.BHOSALE,J.)